

Broadcast

Preventing and Responding to Sexual Harassment

Greetings! Today's two hour broadcast fulfills the training requirements of Government Code Section 12950.1 all court staff who perform in a supervisory position. To meet this legal requirement your full participation in today's broadcast is required.

You're encouraged to fax in any questions, comments or issues throughout the broadcast. The fax numbers are: **(415) 557-1137** and **(415) 557-1138**.
(A fax page can be found at the end of this packet.)

Learning objectives for today's broadcast are:

1. Describe the prohibitions against workplace sexual harassment, discrimination, and retaliation as defined by federal and state law;
2. Identify who may be held liable for workplace sexual harassment;
3. List the remedies available under the law to individuals who have experienced sexual harassment.
4. Identify potential indicators of sexual harassment, discrimination and retaliation, and
5. Describe your role and responsibilities in preventing and responding to sexual harassment, discrimination and retaliation.

Worksheet 1

Test Your Knowledge

- | | | |
|---|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| T | F | 1. By legal definition, sexual harassment can only occur between men and women. |
| T | F | 2. It is OK for women to engage in some conduct of a sexual nature because most men wouldn't find it "unwelcome". |
| T | F | 3. The court can only be considered liable for sexual harassment that is tolerated by or results from the actions of individuals who are officially in supervisory and management positions. |
| T | F | 4. If a supervisor has a consensual relationship with an employee that is <u>not</u> her or his direct report, the relationship would not be considered sexual harassment. |
| T | F | 5. There are different standards for men and women as to what might be regarded as offensive or intimidating behavior. |
| T | F | 6. Supervisors must act on every report or complaint of sexual harassment, even if the person allegedly being harassed doesn't want to "file a formal complaint" or asks you "not to do anything". |
| T | F | 7. A supervisor should document every sexual harassment allegation and its resolution whether the complaint was resolved on a formal or informal basis. |
| T | F | 8. Employers may require offended employees to take direct action, such as telling the harasser to <u>stop</u> , prior to the filing of a formal complaint. |
| T | F | 9. Supervisors and employers cannot be held liable for unwelcome conduct of a sexual nature at a holiday party or other work-related gathering as long as it is held off the premises and after business hours. |
| T | F | 10. The supervisor has the responsibility to assure that co-workers do not retaliate against the complainant. |
| T | F | 11. Poor performance may be an indicator of possible sexual harassment or discrimination. |

Definitions

Sexual harassment is:

- Discrimination that violates Title VII of the Civil Rights Act of 1964
- Unwelcome conduct of a sexual nature occurring in the workplace

Notes from the Broadcast

“unwelcome”

“of a sexual nature”

“occurring in the workplace”

Two types of sexual harassment:

1. *Quid Pro Quo* sexual harassment occurs when an employment decision is made based on the subject's submission to (or rejection of) sexual advances.
2. *Hostile environment* sexual harassment occurs when conduct that is sexual or gender-based in nature has the effect of creating an intimidating, hostile or offensive working environment or when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance.¹

¹ Unwelcome sexual behavior does not have to be directed at an individual to be considered sexual harassment; its *presence* in the workplace can create a hostile environment.

Potential Indicators of Sexual Harassment

As a supervisor or manager in the court, you should know and be attuned to behavioral and performance-related cues that may indicate that an employee is experiencing sexual harassment. Each of the cues below is a potential indicator of sexual harassment.

- ☐ Avoidance of work-related tasks or assignments that brings the employee into contact with a specific individual or work group.
- ☐ Clear avoidance of a specific individual or group.
- ☐ Avoidance of work-related social gatherings or group activities.
- ☐ Unexplained request for change of assignment.
- ☐ Unexplained request for transfer to another unit (e.g. a lateral transfer).
- ☐ Increased use of leave or increased absenteeism.
- ☐ Employee begins wearing concealing, baggy, or conservative clothing.
- ☐ Employee experiences a sudden weight loss or gain.
- ☐ Sudden, unexpected decline in performance.
- ☐ Unexplained change in emotional behaviors (emotional outbursts, moodiness, change in mood that is uncharacteristic for that employee).

NOTE

These cues may also be indicators of other stressors such as substance abuse, a personal or family problem to name just a few. If you observe these cues with a particular employee, you should use active communication skills such as open-ended questions to further explore the reason for the behavioral or performance change.

Sexual Harassment Liability Issues

Who is Liable?

| | Harasser | Manager or Supervisor | Court |
|----------------------------|----------|-----------------------------------------------------------------------|----------------------------------------------------------------------------|
| Quid Pro Quo | Always | ✓ If s/he knew or should have known AND ✓ Failed to take action | Always |
| Hostile Environment | Always | ✓ If s/he knew or should have known AND ✓ Failed to take action | ✓ If the court knew or should have known AND ✓ Failed to take action |

The court is *a/ways* liable in quid pro quo cases and cases when a supervisor is the harasser. In hostile environment cases involving co-workers or third parties, employers and supervisors may or may not be liable (see chart above).

Employers can be held automatically liable if supervisors harass workers even if:

- the employer had no knowledge of the harassment,
- the employee suffered no tangible loss, and
- the employee did not report the harassment to proper officials.

The strongest defenses against employer liability are having a clearly articulated sexual harassment policy and prevention and reporting practices that are highly visible throughout the organization. In defending against liability an employer needs to establish that “reasonable care” was exercised to promptly correct and to prevent instances of sexual harassment. Demonstrating that well-published and accessible organization-wide anti-harassment policies, practices and procedures are in place and that the plaintiff did not take advantage of the programs could help establish the reasonable care defense.

Prohibited behaviors include:

- Unwelcome sexual advances.
- Offering employment benefits in exchange for sexual favors.
- Retaliation or threats of retaliation in response to declining sexual advances or filing a report or complaint of sexual harassment.
- Visual conduct: leering, mooning, sexual gestures, display of sexually suggestive objects, pictures, posters, screensavers, cartoons, etc.
- Verbal conduct: making or using derogatory comments, slurs, epithets, jokes, or remarks that are gender-based or of a sexual nature.
- Verbal abuse: graphic or sexual comments or remarks about a person's body or appearance, suggestive or obscene letters, notes, or invitations.
- Physical conduct: unwanted touching, impeding or blocking movement.

Behaviors that may constitute sexual harassment:

- Repeated requests for dates or other invitations.
- Remarks about a person's looks, clothing, body.
- Whistling, staring, offensive facial expressions.
- Hugging, patting, pinching, poking, and kissing.
- Questions about a person's sexual practices.
- Use of gender-based patronizing terms or remarks.
- Unwanted sharing of personal information of a sexual nature.
- Love poems, e-mails, or notes of a sexual or suggestive nature.

Sexual Harassment Case Studies

Worksheet 2

Case Study 1: The Extrovert

As a new supervisor in the criminal division, you rely heavily on the assistance of your lead clerk to troubleshoot problems, train employees on new procedures and to keep you informed about any significant performance or customer service issues that come up on a day to day basis. This clerk has performed these functions in your court for over five years. She describes herself as a caring, warm, expressive person. She is exuberant and outgoing with a quick smile. She often hugs employees – men and women alike - when she or they return from a vacation and is frequently seen touching the shoulders and arms of employees when she speaks with them in the hallways in the office. She seems genuinely fond of her co-workers and they seem to return the sentiment. There have been no complaints or “grumbings” about her behavior from anyone

You have recently become the supervisor for this unit. On a one-to-one basis you have always enjoyed her personal style, but are curious as to how your staff, especially your new trainees perceive her. When you recently observed her in several interactions with staff, you didn’t see any negative reaction. There are a couple of people who just aren’t the “touch-feely” type, but even they just roll their eyes and hug her back.

1. Can the lead clerk’s behavior be considered sexual harassment?
2. Based on what you have observed and know about preventing sexual harassment, what do you need to do at this point?
3. If you decided to take a wait-and-see attitude, what are the possible consequences for you, the lead clerk, and the court?

Worksheet 3

Case Study 2: The Complimentary Courier

A large law firm that does a lot of business with the court has recently switched to a new courier service. As supervisor of the receptionist you were recently discussing a new assignment with her. As you were leaving her work area, a female courier walked in and said, "Hey, you are looking especially fine today." The receptionist rolled her eyes and shook her head and did not respond except to receive the packages.

1. Is this harassment? If yes, what kind?
.
2. What action(s) do you need to take? Why?
3. Would it matter in this case if your receptionist was male?

Case Study 3: The Unsuitable Suitor

1. What is the sexual harassment issue here?

2. What is the supervisor's responsibility in this situation?

Worksheet 5

Roles & Responsibilities Checklist

| Activity | Primary Role or Responsibility of: | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------------|
| | Supervisor/ Manager | Human Resources |
| 1. Know what sexual harassment is, how to report it, understand and explain appropriate discipline and investigative practices. | | |
| 2. Pay attention to and be a presence in the workplace. Routinely look for display of inappropriate graphics (posters, photos, calendars, etc). | | |
| 3. Be a positive and visible role model. Avoid making gender-based and other inappropriate jokes and remarks; touching and hugging. | | |
| 4. Stay tuned in to the office network. Be aware of interpersonal issues in the unit, especially dating. Objectively assess any negative changes in behavior or performance. | | |
| 5. Be available and prepared to take seriously <i>any</i> complaints or reports of harassment or offensive behavior. | | |
| 6. Plan and conduct employee training that includes: <ul style="list-style-type: none"> ▪ The courts sexual harassment policy (including retaliation) ▪ An information sheet (as required by DFEH) with specific examples ▪ An explanation of internal and external complaint options ▪ Identifying a minimum of 2 individuals (preferably more) in the court to whom a report can be made. ▪ Training is given to all new employees and at least annually to staff. | | |

| Activity | Primary Role or Responsibility of: | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|--------------------|
| | Supervisor/ Manager | Human Resources |
| 7. Conduct staff meetings with Q&A sessions to reinforce the court's policy on sexual harassment. Openly discuss concerns about sexual harassment. | | |
| 8. Use a variety of other means to detect sexual harassment <ul style="list-style-type: none"> ▪ Exit interviews ▪ Periodic surveys which inquire about sexual harassment issues ▪ Suggestion/Comments box (anonymous) | | |
| 9. Be prepared to effectively use an internal complaint process <ul style="list-style-type: none"> ▪ Describe the role of each person involved in the complaint investigation process ▪ Explain to employees what to expect from an investigation and disciplinary practices ▪ Take an initial complaint or report | | |
| 10. Be prepared to effectively use an internal complaint process <ul style="list-style-type: none"> ▪ Conduct a formal investigation ▪ Analyze findings, make a recommendation ▪ Implement corrective action and/or discipline | | |
| 11. Immediately re-issue the courts policy on sexual harassment if a charge of sexual harassment is received. (No matter when it was last re-issued). | | |

Adapted from Sexual Harassment: A Prevention And Investigation Guide; California Chamber of Commerce; Sacramento, CA; 2001

Sexual Harassment Preventative Measures and Available Remedies

Preventative measures by the Court

- ✓ Provide copies of the court's anti-harassment and discrimination policy to employees and independent contractors.
- ✓ Inform employees of the court's complaint and investigation procedure.
- ✓ Distribute to employees and independent contractors the brochure "Sexual Harassment Is Forbidden by Law" (DFEH - 185) or an equivalent information sheet.
- ✓ Display in designated common areas the employee rights poster available from the Department of Fair Employment and Housing (DFEH -162).
- ✓ Conduct periodic training of employees and supervisory staff.

Preventative measures you can take

- ✓ Know what sexual harassment is and how to report it to court management.
- ✓ Be a positive and visible role model.
- ✓ Pay attention to your workplace surroundings and report inappropriate behavior or visual displays.
- ✓ Be aware of interpersonal issues among court staff.
- ✓ Be available and prepared to take seriously any complaints or reports of harassment or offensive behavior.
- ✓ Be prepared to effectively use your court's internal complaint process.

Available remedies

An aggrieved employee or independent contractor has available escalating means of resolving claims of sexual harassment:

- Use the court's internal complaint and investigation process.
- File a charge of sexual harassment with a governmental fair employment agency:
 - California's Department of Fair Employment & Housing (DFEH), and/or
 - The federal Equal Employment Opportunity Commission (EEOC).
- Bring a lawsuit under state and/or federal law.

Resources

Department of Fair Employment and Housing (800) 884 –1684
<http://www.dfeh.ca.gov/>

Equal Employment Opportunity Commission (800) 669 – 4000
<http://www.eeoc.gov/>

AOC Human Resources Division (415) 865 – 4260

Worksheet 6

Taking Preventive or Corrective Actions

This exercise is designed to help you think about what type(s) of preventive or corrective action is most appropriate in response to common situations or behaviors that **are** or **may lead** to sexual harassment. There is no one set of right and wrong answers. You may find that some of the situations do not have enough information to make a final decision. Use the exercise to generate discussion and explore your own ideas about what actions you may need to take in a possible harassment situation.

For each situation, indicate the appropriate action(s) by choosing one or more of the following items:

1. Take no action.
2. Reissue the court's sexual harassment policy.
3. Talk to the employee(s) involved regarding the behavior.
4. Discuss sexual harassment policy and expectations with staff.
5. Refer to Human Resources for investigation.
6. Appropriate corrective or disciplinary action of the harasser is required.

| Conduct or Behavior | Perception by Subject or Others | Action (s) (1- 6) |
|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1. Sexual comments and jokes that both parties participate in making. | Comments and jokes are welcome and accepted by subjects. Other staff have overheard them. | |
| 2. Female supervisor flirts by touching male employee on sleeve and complimenting his appearance | Male employee believes that he cannot disapprove of the touching because she is his boss. Others have not seen or overheard this behavior. | |
| 3. An attorney frequently greets the counter staff with sexual jokes or innuendo. | You notice that some counter staff avoid serving this attorney. | |
| 4. Male employee compliments a female on her looks – every day. He's flirting. | The female has indicated by words or actions that the behavior is welcome. | |

| Conduct or Behavior | Perception by Subject or Others | Action (s) (1- 6) |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 5. Co-workers frequently hug and touch one another. | Behavior is welcome by subjects. Other staff appear uncomfortable with the familiarity of the behavior. | |
| 6. A consultant teaching a class to court staff begins the presentation with several cartoons of gender-based humor. | Does not contribute to a productive learning environment. May be perceived as sexual harassment by reasonable woman or man. | |
| 7. A male supervisor regularly asks questions of females in the office and turns their replies into sexual innuendo. | The female staff are uncomfortable with the joking. | |
| 8. A female worker asks a male employee out on a date. Staff have heard that he said "no thanks" to the invitation. | The "grapevine" knows about his refusal. | |
| 9. Two male employees are dating and have non-sexual, intimate conversations in one of their cubicles. | The relationship is consensual and welcome. Other employees can overhear their conversations. | |
| 10. Someone who has just had a negative performance review accuses the reviewing supervisor of sexual harassment. | The subject maintains the harassment occurred three months ago. The supervisor's manager suspects the subject is lying and retaliating for the poor performance review. | |
| 11. You have received a complaint about a male bailiff making suggestive remarks to female court staff. | The behavior is unwelcome by the court staff. It has occurred in front of the public while doing business with the court. | |

Adapted from Sexual Harassment: A Prevention And Investigation Guide; California Chamber of Commerce, Sacramento, CA; 2001

Worksheet 7 Vignette Questions

Vignette 1: *The Attitude Problem*

1. (Part 1) Review the dialogue below between Wendy and her supervisor. Would you have handled the situation differently? Please discuss what you felt the supervisor did well, and what she might have done differently.

Wendy: Hi, Van. You wanted to see me about something?

Van: Yes, I did. Come in and close the door behind you. Wendy, it seems like every time I come looking for you lately, you're not at your desk and no one seems to know where you are.

Wendy: Well...- I've had to take care of a lot of things at the counter lately.

Van: But, I never find you there, either. You've been lead now for, how long, four weeks? It isn't like you to just disappear and be gone so long. I don't think that you're setting a very good example for the rest of the staff by taking long, frequent breaks, do you?

Wendy: No, I've just had some personal issues to deal with. It won't happen any longer. I'm really sorry.

Van: O.K. I've put a lot of trust in you Wendy. It's important that you're an excellent role model for the rest of the staff. You understand that, don't you?

Wendy: Yes, Van. I really do.

Van: Good. So what's happening with that report Jeff has been looking for?

(Part 2) What was different about the supervisors approach and results?

Worksheet 8

Vignette Questions

Vignette 2: ***I Know My Employees***

1. What assumptions might the judge have made?

2. Why might the judge believe that the clerk, Cindy, would confide in him?

3. Why might Cindy *not* tell him?

4. What *should* the judge have done?

Preventing and Responding to Sexual Harassment Broadcast
Evaluation Form

1. Has the broadcast increased your knowledge of your role in preventing and responding to sexual harassment as a supervisor or manager? If so, what information did you find most helpful?

2. What questions do you still have?

3. What suggestions do you have for improvement of this broadcast?

4. Please rate the following broadcast elements of the program

| | strongly agree | | strongly disagree | | |
|-----------------------------------------------------------------------------------------------------------|----------------|---|-------------------|---|---|
| The activities in the course helped me learn the content... | 5 | 4 | 3 | 2 | 1 |
| The course duration was the right length... | 5 | 4 | 3 | 2 | 1 |
| The content of the course was relevant to my work needs... | 5 | 4 | 3 | 2 | 1 |
| If applicable, issues of access and/or bias and stereotypes were appropriately addressed in the course... | 5 | 4 | 3 | 2 | 1 |

Suggestions for future broadcasts:

Court Name _____

Downlink Site Location: _____
(City)

Remember to check COMET (Court Online Mentoring, Education, and Training) at www.courtinfo.ca.gov/comet for training opportunities, resources and answers to your Frequently Asked Questions. See your local training coordinator for the



Please FAX completed form to: Jay Harrell at (415) 865-4335

BROADCAST FAX FORM



To: Jay Harrell
Fax #: (415) 557-1137 or (415) 557-1138
Fr:
Su: Preventing and Responding to Sexual Harassment

Questions and/or comments:

**Questions not answered during the broadcast will be posted to the COMET site (www2.courtinfo.ca.gov/comet) with our panelists' responses.*